

(b). States have 270 days from July 1980 to submit applications, or until 20, 1981.

This period may be extended by up to another 270 days by the Regional Administrators for "good cause", or until January 15, 1982.

A State need not wait until it is ready to submit its application for all classes of wells. EPA will entertain partial applications for primacy as long as the program for which approval is sought covers: (1) all elements of a program to regulate a particular class or classes of injection practices even if the class or classes involve the jurisdiction of more than one State agency; or (2) all elements of a program to regulate all the classes or types of wells within the jurisdiction of a single State agency. However, if a State submits a partial application, the alternative demonstration under Section 1425 may be used only for the Class II portion of the application. The portion of the program covering types of practices other than Class II will have to meet the requirements of 40 CFR Parts 122, 123, 124 and 146.

2.5 Effects of a Partial Application

The recent amendments have changed Section 1443 of the SDWA so that a State may receive grant support until 1982. After that date, it must have achieved full primacy in order for grant eligibility to continue. As a consequence, a State may receive partial primacy for its Class II control program and continue to receive grants: (1) if it has obtained an extension for submitting the remainder of its application; (2) until it declares its intention not to file any further applications; (3) until EPA terminates its grant for cause; or (4) until July 1982, whichever is soonest.

If a State receives full primacy, its eligibility for grants will, of course, continue.

3.0 Elements of an Application for Primacy under Section 1425

3.1 Elements of a State Application

A complete State submission should contain the following elements:

- a. a letter from the Governor;
- b. a description of the program;
- c. a statement of legal authority;
- d. copies of the pertinent statutes and regulations;
- e. copies of the pertinent State forms; and
- f. a signed copy of a Memorandum of Understanding.

The nature of these elements is described further below.

3.2 Letter From the Governor

The letter from the Governor should:

- a. request approval of the State's program for primacy under the UIC program;

- b. specify whether approval is sought under Section 1425 of the SDWA or under 40 CFR Parts 122, 123, 124, and 146; and

- c. affirm that the State is willing and able to carry out the program described.

3.3 Program Description

A State's application is expected to contain a full description of the program for which approval is sought, in sufficient detail to enable EPA to make the judgments outlined in Section 5 below. Such a description should:

- a. Specify the structure, coverage and scope of the program;

- b. Specify the State permitting process and address, to the extent applicable, the following elements:

1. Who applies for the permit or the authorization by rule;

2. Signatories required for permit application and reports;

3. Conditions applicable to permits, including: duty to comply with permit conditions, duty to reapply, duty to halt or reduce activity, duty to mitigate, proper operation and maintenance, permit actions, property rights, inspection and entry monitoring, record keeping, and reporting requirements;

4. Compliance schedules;

5. Transfer of permits;

6. Termination of permits;

7. Whether area permits or project permits are granted;

8. Emergency permits;

9. The availability and use of variances and other discretionary exemptions to programmatic requirements; and

10. Administrative and judicial procedures for the modification of permits.

- c. Describe the operation of any rules used by the State to regulate Class II wells;

- d. Describe the technical requirements applied to operators by the State program;

- e. Include a description of the State's procedures for monitoring, inspection and requiring reporting from operators;

- f. Discuss the State's enforcement program, e.g.:

1. Administrative procedures for dealing with violations;

2. Nature and amounts of penalties, fines and other enforcement tools;

3. Criteria for taking enforcement actions; and

4. If the State is seeking approval for an existing program, summary data on:

- A. Past practice in the use of enforcement tools;

- B. Current compliance/non-compliance with State requirements;

- C. Repeat violations at the same well or by the same operator at different wells;

- D. Well failure rates; and

- E. USDW contamination cases based on actual field work and citizen complaints.

- g. Detail the State's staffing and resources, and demonstrate that these are sufficient to carry out the proposed program;

- h. If more than one State agency is involved in the Class II program, describe their relationships with regard to carrying out the Class II program;

- i. Contain a reasonable schedule for completion of an inventory of Class II wells in the State;

- j. Include the procedures for exempting aquifers, a list of the aquifers or portions of aquifers proposed for exemption at the time of application, and the reasons for the proposed exemptions, unless these have been described in the partial applications made by the State;

- k. Contain a plan (including the basis for assigning priorities) for the review of all existing Class II wells in the State within five years of program approval to assure that they meet current non-endangerment requirements of the State (this may include permit modification and reissuance, if appropriate);

- l. Describe State requirements for ensuring public participation in the process of issuing permits and modifying permits in the case of substantial changes in the project area, injection pressure or the injection horizon; and

- m. Describe State procedures for responding to complaints by the public.

3.4 Statement of Legal Authority

The statement of legal authority is intended to assure EPA that the State has the legal authority to carry out the program described. It may be signed by a competent legal officer of the State, for example, the Attorney General, the Counsel for the responsible State agency, or any other officer who represents the Agency in legal matters.

The statement may, at the option of the State, consist of a full analysis of the legal basis for the State program, including case law as appropriate. Or the statement may consist of a simple certification by the legal representative that the State has adequate authority to carry out the described program. If the State chooses to submit a certification, the program description should detail

the legal authority on which the various elements of the State's program rest.

Copies of Statutes and Regulations

The application should contain copies of all applicable State statutes, rules and regulations, including those governing State administrative procedures.

3.6 Copies of State Forms

The application should contain examples of all forms used by the State in administering the program, including application forms, permit forms and reporting forms.

3.7 Memorandum of Agreement

The head of the cognizant State agency and the EPA Regional Administrator shall execute a memorandum of agreement which shall set forth the terms under which the State will carry out the described program and EPA will exercise its oversight responsibility. A copy of such an agreement signed by the Director of the State agency, shall be submitted as part of the application.

At a minimum, the memorandum of agreement should:

- a. Include a commitment by the State that the program will be carried out as described and be supported by an appropriate level of staff and resources;
- b. Recognize EPA's right of access to any pertinent State files;
- c. Specify the procedures (e.g., notification to the State and participation by State officials) governing EPA inspections of wells or operator records;
- d. Recognize EPA's authority to take Federal enforcement action under Section 1423 of the SDWA in cases where the State fails to take adequate enforcement actions;
- e. Agree to provide EPA with an annual report on the operation of the State program, the content of which may be negotiated between EPA and primacy States from time to time;
- f. Provide that aquifer exemptions for Class II wells be consistent with aquifer exemptions for the rest of the UIC program;
- g. When appropriate, may include provisions for joint processing of permits by the State and EPA for facilities or activities which require permits from both EPA and the State under different programs; and
- h. Specify that if the State proposes to allow any mechanical integrity tests other than those specified or justified in the program application, the Director [notify the cognizant Regional Administrator and provide enough information about the proposed test that

a judgment about its usefulness and reliability may be made.

4.0 Process for Approval or Disapproval of Application

4.1 Public Participation by States

Section 1425 relieves States of the responsibility to hold public hearings or afford an opportunity for public comment prior to submitting an application to EPA. Therefore, when application is made by a State under Section 1425, it may, but need not, provide an opportunity for public hearings or comments.

4.2 Complete Applications

Within 10 working days of the receipt of a final application, EPA will determine whether the application is complete or not and so notify the State in writing. If the application is found to be incomplete it will be returned to the State with specific requests for additional material or changes. However, the State may, at its option, insist that EPA complete its review of an application as submitted.

4.3 EPA Review

a. EPA has 90 days to approve or disapprove an application. If EPA finds that the application is complete, the review period will be deemed to have begun on the date the application was received in the cognizant Regional Office. If an application has been found to be incomplete and the State insists that EPA proceed with its review of the application as submitted, the review period will begin on the date that EPA receives the State's request to proceed in writing. The review period may be extended by the mutual consent of EPA and the State.

b. Within the 90-day period, EPA will request public comments and provide an opportunity for public hearing on each application, in the applying State, in accordance with 40 CFR 123.54(c) and (d). If the State has not done so, EPA will hold at least one public hearing in the State.

c. If a State's application is approved, the State shall have primary enforcement responsibility for its Class II program.

d. If a State's application is disapproved, EPA intends within 90 days of disapproval or as soon thereafter as feasible, prescribe a Class II program for the State in accordance with Section 1422(c) of the SDWA and 40 CFR Parts 122, 124 and 146.

5.0 Criteria for Approving or Disapproving State Programs

5.1 General

Section 1425 of the SDWA states that: " . . . the State may demonstrate that [the Class II] portion of the State program meets the requirements of subparagraphs (A) through (D) of Section 1421(b)(1) and represents an effective program (including adequate recordkeeping and reporting) to prevent underground injection which endangers drinking water sources."

Thus Section 1425 requires that a State, in order to receive approval for its Class II program under the optional demonstration, make a successful showing that its program meets five conditions:

a. Section 1421(b)(1)(A) requires that an approvable State program prohibit any underground injection in such State which is not authorized by permit or rule.

b. Section 1421(b)(1)(B) requires that an approvable State program shall require that:

1. The applicant for a permit must satisfy the State that the underground injection will not endanger drinking water sources; and
2. No rule may be promulgated which authorizes any underground injection which endangers drinking water sources.

c. Section 1421(b)(1)(C) requires that an approvable State program include inspection, monitoring, recordkeeping, and reporting requirements.

d. Section 1421(b)(1)(D) requires that an approvable State program apply to: (1) underground injections by Federal agencies; and (2) underground injections by any other person, whether or not occurring on property owned or leased by the United States.

e. Section 1425(a) requires that an approvable State program represent an effective program to prevent underground injection which endangers drinking water sources.

The following sections provide guidance to EPA personnel for making the required judgments with respect to these five conditions in the review of an application for approval under Section 1425.

5.2 Section 1421(b)(1)(A)

The question of whether a State program prohibits unauthorized Class II injections is a function of the State's statutory and regulatory authority. A determination of whether the State program meets this condition should be made from a review of the coverage and scope of the program, the statement of

legal authority submitted by the State, and of the statutes and regulations themselves. One important consideration is whether the State has an appropriate formal mechanism for modifying permits in cases where the operation has undergone significant change.

5.3 Section 1421(b)(1)(B)

The determination of whether a State program is adequate in requiring that the applicant demonstrate that the proposed injection will not endanger drinking water sources turns on two elements: (1) whether the State program places on the applicant the burden of making the requisite showing; and (2) the extent of the information the applicant is required to provide as a basis for the State agency's decision. Whether the burden of making the requisite showing is on the applicant should be determined from the State's description of its permitting process. If the necessary information is available in State files, the Director need not require it to be submitted again. However, as a matter of principle, the applicant should not escape ultimate responsibility for assuring that the information about his operation is accurate and available. One consideration in this regard is whether the well operator has a responsibility to inform the permitting authority about any material change in his operation, or any pertinent information acquired since the permit application was made.

With regard to the extent of the information to be considered by the Director, the State program should require an application containing sufficiently detailed information to make a knowledgeable decision to grant or deny the permit. Such information should include:

a. A map showing the area of review and identifying all wells of public record penetrating the injection interval;

b. A tabulation of data on all wells of public record within the area of review which penetrate the proposed injection zone. Such data should include a description of each well's type, construction, date of drilling location, depth, record of plugging and/or completion, and any additional information the Director may require;

c. Data on the proposed operation, including:

1. Average and maximum daily rate and volume of fluids to be injected;

2. Average and maximum injection pressure; and

3. Source, and an appropriate analysis of injection fluid if other than produced water, and compatibility with the receiving formation;

d. Appropriate geological data on the injection zone and confining zones including lithologic description, geological name, thickness, and depth;

e. Geologic name, and depth to bottom of all underground sources of drinking water which may be affected by the injection;

f. Schematic drawings of the surface and subsurface construction details of the system;

g. Proposed stimulation program;

h. All available logging and testing data on the well; and

i. The need for corrective action on wells penetrating the injection zone in the area of review.

There are two circumstances under which the director may require less information from the applicant. First, the Director need not require an applicant to resubmit information which is up-to-date and readily available in State files. Second, a State's application may outline circumstances or conditions where certain items of information may not be required in a specific case. Such circumstances may include situations where, based upon demonstrable knowledge available to the director about a specific operation, the Director proposes to permit that operation without requiring corrective action or alternatives to it. Examples of such circumstances are gravity or vacuum injections and injections through zones of plastic heaving shales.

Section 1421(b)(1)(B) also requires a State which authorizes Class II injections by rule to show that such rules do not allow any underground injection which endangers drinking water sources. The determination of whether the State program meets this requirement may be made from the program description, statement of legal authority, the text of the rules themselves, and the manner in which the State has administered such rules.

5.4 Section 1421(b)(1)(C)

This section of the SDWA requires that an approvable State program contain elements for inspection, monitoring, recordkeeping and reporting. The adequacy of the State program in these respects may be assessed with the use of the following criteria.

a. Inspection.

An approvable State program is expected to have an effective system of field inspection which will provide for:

1. Inspections of injection facilities, wells, and nearby producing wells; and

2. The presence of qualified State inspectors to witness mechanical integrity tests, corrective action operations, and plugging procedures.

An adequate program should insure that, at a minimum, 25% of all mechanical integrity tests performed each year will be witnessed by a qualified State inspector.

b. Monitoring, Reporting and Recordkeeping.

1. The Director should have the authority to sample injected fluids at any time during injection operation.

2. The operator should be required to monitor the injection pressure and injection rate of each injection well at least on a monthly basis with the results reported annually.

3. The Director should require prompt notice of mechanical failure or downhole problems in injection wells.

4. The State should assure retention and availability of all monitoring records from one mechanical integrity test to the next (i.e., 5 years).

5.5 Section 1421(b)(1)(D)

An approvable State program must demonstrate the State's authority to regulate injection activities by Federal agencies and by any other person on property owned or leased by the United States. The adequacy of the State's authority in these regards may be assessed on the basis of the program description and statement of legal authority submitted by the State. Such authority and the programs to carry it out must be in place at a time no later than the approval of the program by EPA. EPA will administer the UIC program on Indian lands unless the State has the authority and is willing to assume responsibility.

5.6 Section 1425(a)

In addition to the four demonstrations discussed above, Section 1425 requires a State to demonstrate that the Class II program for which it seeks approval in fact "represents an effective program to prevent underground injection which endangers drinking water sources."

Among the factors that EPA will consider in assessing the "effectiveness" of a State program are: (1) whether the State has an effective permitting process which results in enforceable permits; (2) whether the State applies certain minimum technical requirements to operators by permit or rule; (3) whether the State has an effective surveillance program to determine compliance with its requirements; (4) whether the State has effective means to enforce against violators; and (5) whether the State assures adequate participation by the public in the permit issuance process.

Evidence of the presence or absence of ground water contamination is important. However, it cannot serve as

be sole criterion of effectiveness. Not all States have collected such evidence systematically. More importantly, the absence of evidence of contamination, especially if based on an absence of complaints, is not necessarily proof that ground water contamination has not occurred.

Each of the five factors named above is discussed further in the following subsections. In its review of these factors, EPA is not necessarily looking for a minimum set or even any particular elements. The effectiveness of a State program will be assessed by reviewing the State's entire program. The absence of even an important element in a State program may not by itself mean that the program is ineffective as long as there is a credible program for detecting and eliminating injection practices which allow any migration which endangers drinking water sources.

a. Permitting Process.

Section 3.3b of the Program Description outlines the major elements of the permitting process. The listing of these considerations should not be viewed as Federally imposed minimum policy, but rather as an outline of the information which will be necessary for EPA to evaluate the effectiveness of the State's permitting process.

States may deal with permitting considerations, such as limitations on the transfer of permits, in a variety of ways. There are many permitting approaches which may be equally effective. EPA's review will turn on whether the permitting process, taken as a whole, represents an effective mechanism for applying appropriate and enforceable requirements to operators.

b. Technical Criteria.

Any approvable State program should have the authority to apply, by permit or rule, certain technical requirements designed to prevent the migration of injected or formation fluids into USDWs. Any State program adopting the language of 40 CFR 146 should be considered approvable on its face value for that portion of the program to which it applies. State applications not relying on the language of 40 CFR 146 should be reviewed for the presence and adequacy of the following kinds of technical requirements in the State program.

1. Siting.

Siting requirements should be considered in the placement and construction of any Class II disposal well. Such requirements should be designed to assure that disposal zones are hydraulically isolated from underground sources of drinking water (USDWs). Such isolation may be shown through information supplied by the applicant, or data, on file with the State,

which would be analyzed by qualified State staff.

2. Construction.

A. Effective programs should require all newly drilled Class II wells to be cased and cemented to prevent movement of fluids into USDWs.

Specific casing and cementing requirements should be based on:

- I. the depth to the base of the USDW;
- II. the nature of the fluids to be injected; and
- III. the hydrologic relationship between the injection zone and the base of the USDW.

B. All newly converted Class II wells should be required to demonstrate mechanical integrity.

3. Operation.

A. Adequate operating requirements should establish a maximum injection pressure for a well which assures that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the confining zone. Limitations on injection pressure should also preclude the injection from causing the movement of fluids into an underground source of drinking water.

Acceptable methods for establishing limitations on injection pressures include:

- I. Calculated fracture gradients;
- II. Injectivity tests to establish fracture pressure; or
- III. Other compelling geologic, hydrologic or engineering data.

B. An effective State program should have the demonstrated ability to detect and remedy system failures discovered during routine operation or monitoring so as to mitigate endangerment to USDWs.

4. Plugging and Abandonment.

Plugging and abandonment requirements should be reviewed for the presence of the following elements:

A. That appropriate mechanisms are available in the State program to insure the proper plugging of wells upon abandonment;

B. That all Class II wells are required, upon abandonment, to be plugged in a manner which will not allow the movement of fluids into or between USDWs; and

C. That operators are required to maintain financial responsibility in some form, for the plugging of their injection wells.

5. Area of Review.

An effective State program is expected to incorporate the concept of an area of review defined as a radius of not less than $\frac{1}{4}$ mile from the well, field, or project.

Alternatively, a State program may substitute a concept of a zone of

endangering influence in lieu of this fixed radius. The zone of endangering influence should be determined for the estimated life of the well, field, or project through the use of an appropriate calculation, formula, or mathematical model that takes the relevant geologic, hydrologic, engineering and operational features of the injection well, field or project into account.

6. Corrective Action.

An approvable State program is expected to include the authority to require the operator to take corrective actions on wells within the area of review or zone of endangering influence.

A. Corrective action may include any of the following types of requirements:

- I. recementing;
- II. workover;
- III. reconditioning; or
- IV. plugging or replugging.

B. A State program may provide the Director the discretion to specify the following types of requirements in lieu of immediate corrective action:

I. Permit conditions which will assure a negative hydraulic gradient at the base of USDW at the well in question;

II. Monitoring program (i.e., monitoring wells completed to the base of USDW within the zone of influence); or

III. Periodic testing to determine fluid movement outside the injection interval at other wells within the area of review.

However, if monitoring or testing indicate the potential endangerment of any USDW, corrective action shall be required.

C. In cases where the Director has demonstrable knowledge of geologic, hydrologic, or engineering conditions, specific to a given operation, which assure that wells within the zone of endangering influence or area of review will not serve as conduits for migration of fluids into an USDW, a State program may provide the Director the discretion to permit a specific operation without requiring corrective actions or any of the alternatives specified in Subsection (B) above. Examples of such circumstances are gravity or vacuum injections and injections through zones of plastic heaving shales. However, under the statute the State program may, in no circumstances, authorize an injection which endangers drinking water sources.

7. Mechanical Integrity.

An approvable State program is expected to require the operator to demonstrate the mechanical integrity of a new injection well prior to operation and of all injection wells periodically, at least once every five years. For the purpose of assessing the State's mechanical integrity requirements:

An injection well has mechanical integrity if:

- i. there is no significant leak in the casing, tubing or packer; and
- ii. there is no significant fluid movement into an underground source of drinking water through vertical channels adjacent to the well bore.

B. The following tests are considered to be acceptable tests to demonstrate the absence of significant leaks:

- i. a pressure test with liquid or gas;
- ii. the monitoring of annulus pressure in those wells injecting at a positive pressure, following an initial pressure test; or

iii. all other tests or combinations of tests considered effective by the Director.

C. The following are considered to be acceptable tests to demonstrate the absence of significant fluid movement in vertical channels adjacent to the well bore:

- i. cementing records (they need not be reviewed every five years);
- ii. tracer surveys;
- iii. noise logs;
- iv. temperature surveys; or
- v. any other test or combination of tests considered effective by the Director.

D. If the State program allows or specifies alternative tests under B(iii) or C(v) above, the program description should supply sufficient information so that the usefulness and reliability of such tests in the proposed circumstance may be assessed.

c. Surveillance.

The demonstration of an effective surveillance program has already been discussed in Section 3.4 above.

d. Enforcement.

A State's enforcement of its program is a crucial consideration in making the judgment of whether the State program is effective. States have used a number of enforcement tools to shift the economic incentive of operation more toward compliance with the law. Often State programs have employed civil penalties and, for repeat or willful violators, criminal fines or jail sentences. Other commonly used practices are administrative orders and court injunctions. In the area of oil and gas regulation, many States have found pipeline severance a powerful tool. In assessing a State's enforcement program, EPA will consider not whether a State has all or any particular enforcement tools but whether the State's program, taken as a whole, represents an effective enforcement effort. Certainly, there are many enforcement matrices which create effective programs. In addition, EPA will look at whether the State has exercised

its enforcement authorities adequately in the past.

e. Public Participation.

One factor to be used by EPA in assessing the "effectiveness" of a State program is the degree to which it assures the public an opportunity to participate in major regulatory decisions. It is assumed that most States already have legislation that governs public participation in State decision-making and defines such processes as appeals, etc. Therefore, the following represents only a minimal list of elements that EPA will consider:

1. Public Notice of permit application:

A. The State may give such notice or it may require the applicant to give notice.

B. The method of giving notice should be adequate to bring the matter to the attention of interested parties and, in particular, the public in the area of the proposed injection. This may involve one or more of the following:

- i. Posting;
- ii. Publication in an official State register;
- iii. Publication in a local newspaper;
- iv. Mailing to a list of interested persons; or
- v. Any other effective method that achieves the objective.

C. An adequate notice should:

- i. Provide an adequate description of the proposed action;
- ii. Identify where an interested party may obtain additional information. This location should be reasonably accessible and convenient for interested persons;
- iii. State how a public hearing may be requested; and
- iv. Allow for a comment period of at least 15 days.

2. The State program should provide opportunity for a public hearing if the Director finds, based upon requests, a significant degree of public interest.

A. The Director may hold a hearing of his own motion and give notice of such hearing with the notice of the application.

B. If a public hearing is decided upon during the comment period, notice of public hearing shall be given in a newspaper of general circulation. The hearing should be scheduled no sooner than 15 days after the notice.

3. The final State action on the permit application should contain a "response to comments" which summarizes the substantive comments received and the disposition of the comments.

6.9 Oversight

6.1 General

Once a Class II program is approved under Section 1425, the State has

primary enforcement responsibility for such portion of its UIC program. The Class II program is a grant-eligible activity and is subject to the same EPA oversight as other portions of the UIC program (e.g., State/EPA Agreements, Mid-course Reviews, grant conditions, etc.).

6.2 Mid-Course Evaluation

EPA will conduct a mid-course evaluation of Class II programs as envisioned in 40 CFR 122.18(C)(4)(ii) and 146.25. However, in lieu of a special reporting requirement, additional requirements have been added to the State's annual report to EPA. Should this mechanism prove unable to provide the necessary data, a special reporting requirement may be negotiated with the primary States at a later date.

6.3 Annual Reporting

As part of the Memorandum of Agreement, each State shall agree to submit an annual report on the operation of its Class II program to EPA. At a minimum the annual report shall contain:

- a. An updated inventory;
- b. A summary of surveillance programs, including the results of monitoring and mechanical integrity testing, the number of inspections, and corrective actions ordered and witnessed;
- c. An account of all complaints reviewed by the State and the actions taken;
- d. An account of the results of the review of existing wells made during the year; and
- e. A summary of enforcement actions taken.

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